IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2579 of 2018

P.Krishnaveni ... Appellant/Petitioner

Vs.

1.P.Selvavinayagam

2.Divisional Manager,
United India Insurance Co. Ltd.,
13-A, Nethaji Road, Manjakuppam,
Cuddalore.

Now at: Sillingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai - 600 006. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2016 in M.C.O.P.No.3593 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Cuddalore.

For Appellant : M/s.Ramya V.Rao

For Respondents : Mr.D.Baskaran for R2

: No appearance for R1

J U D G M E N T

This Civil Miscellaneous Appeal arises against the judgment and decree passed by the Motor Accident Claims Tribunal Special Sub Judge, Cuddalore in M.C.O.P.No.3593 of 2014 on 12.09.2016

2.The short facts of the case are as follows:

The appellant herein is the claimant. The appellant/claimant suffered an accident at about 10.15 a.m. on 05.06.2014. While she was standing at her extreme left hand side of the Cuddalore - Puducherry road, at Kirumampakkam, the first respondent's vehicle [motor cycle] bearing Reg.No.PY-01-CB-3100 came at a very high speed in a rash and negligent manner without making any horn and without following the traffic rules and regulations and hit against the petitioner and caused the accident. Hence the claimant suffered grievous injuries in her head and multiple fracture all over the body. She was aged 64 years and was working as a saree merchant and informed that she finds difficult in doing her job and claimed compensation in a sum of Rs.5,00,000/-.

3. Before the Tribunal, the appellant/claimant examined herself as P.W.1 and P.W.2 - Dr.J.S.Chandiran and P.W.3-Dr.Vijay Anand Thambaiya have also been examined and marked the following exhibits:

(a)Ex.P1	:	FIR
(b)Ex.P2	:	Copy of Vehicle Inspection Report
(c)Ex.P3	:	Copy of Insurance Policy
(d)Ex.P4	:	Accident Register
(e)Ex.P5	:	Discharge summary
(f)Ex.P6	:	Copy of Out patient Register pertaining to the claimant
(g)Ex.P7	:	Photograph of the claimant
(h)Ex.P8	:	Permanent Disability certificate issued by P.W.2
(i)Ex.P9	:	Reference letter issued by Dr.Velumani
(j)Ex.P10	:	X-ray
(k)Ex.P11	:	Permanent Disability certificate issued by P.W.3
(l)Ex.P12	:	X-ray

4. Before the Tribunal, it was contended by the insurance company that the owner of the vehicle did not insure the vehicle and that the vehicle had been driven by a person who did not hold a licence as on the date of accident, the same would amount to breach of the policy terms and therefore, the insurance company could not be made liable to effect payment of compensation. Regarding the age and monthly income of the injured they deny, since there is no oral or documentary evidence to prove the same.

5. On appreciation of the materials before it, the Tribunal considering the fact the the appellant/claimant had suffered right fronto temporo parietal acute subdural haemorrahage and right temporal and parietal contusion cerebral oedema with midline shift and that she is suffering with lack of concentration and memory, giddiness on and off and headache and finds difficult in carrying out her day-to-day functions, accepted her disability at 50%. The Tribunal came to the conclusion that the negligence was on the part of the driver of the motor cycle first respondent and directed the Insurance company to pay the compensation amount to the claimant and thereafter to recover from the first respondent.

(a) Disability at 50%	:	Rs. 1,00,000/-
(b) Pain and suffering	:	Rs. 20,000/-
(c) Medical expenses	:	Rs. 10,000/-
(d) Transport expenses	:	Rs. 10,000/-
(e) Nutrition	:	Rs. 5,000/-
(f) Partial permanent disability	:	Rs. 1,00,000/-
		Rs. 1,45,000/-

6. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company.

7. The learned counsel for the appellant/claimant submits that the Tribunal failed to award compensation under "loss of income" during treatment period, attender charges, loss of amenities and future medical expenses. Thus, the learned counsel for the claimant seeks for enhancement of the compensation.

8. Learned counsel for the second respondent/insurance company would make his arguments with regard to negligence as well as quantum. The insurance company/second respondent denies the averments made in the claim petition and that no negligence is attributed on the rider of the motor cycle by stating that it is the petitioner who suddenly crossed the road and at tht time, the first respondent rider of the motor cycle could not avoid the accident inspite of his best efforts. He would further contend that as the rider of the vehicle did not had a valid fitness and registration certificate and also did not have a valid licence as on the date of accident, the appellant insurance company ought not to be held liable. Further it is submitted that insurance company has not received any amount from the first respondent after making the payment of compensation as per the order of the Tribunal. The learned counsel, thus sought to interfere with the award of the Tribunal.

9. The appellant/claimant states that she suffered right fronto temporo parietal acute subdural haemorrahage and right temporal and parietal contusion cerebral oedema with midline shift. She was initially treated at Aarupadai Veedu Medical College Hospital, Puducherry and taken treatment for a long time. Thereafter, the claimant suffered serious pain and could not continue her avocation and again taken treatment in Jipmer Hospital, Pondicherry from 06.07.2015 as Out Patient. The Petitioner had severe headache and giddiness and in this regard, P.W.2 doctor given disability certificate assessing her disability at 50%. The Petitioner's photo showing her head scar portion due to operation is marked as Ex.P.7. Considering the nature of injury stated by the appellant/claimant as well as the evidence of P.W.2 doctor, it is apparent that the claimant

suffered right FTP craniotomy and Osteomyslitis skull and therefore she finds it difficult to do her regular work both at home and business at outside. Further, the claimant is stated to have sustained loss of income for 5 months while she was under continuous treatment. It is also stated by the learned counsel for the appellant/claimant that the claimant being an old age lady finds it difficult to carry on her day to day activities and therefore, towards, loss of income, pain and sufferring, loss of amenities, attender charges, necessarily some enhancement in compensation is justified. The learned counsel also submits that the claimant is still undergoing treatment for the complications that she undergone due to accident and therefore, towards future medical expenses, some amount is required to be awarded by this court.

10. Taking note of the above submissions, for the injuries suffered and the treatment taken for the same, this court is of view that since the claimant is not having any functional disability due to the injury, the disability percentage is taken as 30%. However, since she would not have attended her work and there would have been loss of income, during the period of treatment, it will be appropriate to calculate the compensation as follows:-
Rs.7500/- x 5 months x 30% disability x 12 = Rs.1,44,000/-. This court feel that it is very reasonable to enhance the award amount on the other heads also and thus the details of the modified compensation as per the above discussion are as under:-

S.No	Heads	Amount Awarded by this Court
1	Disability at 30%	Rs.1,44,000/-
2	Pain and suffering	Rs.1,00,000/-
3	medical expenses	Rs.10,000/-
4	Transportation	Rs.20,000/-
5	Extra Nourishment	Rs.25,000/-
6	Loss of amenities	Rs.1,00,000/-
7	Future medical expenses	Rs.25,000/-
8	Damages to cloth	Rs.1,000/-
9	Attender charges	Rs.25,000/-
	Total	Rs.4,50,000/-

Except the above modification in respect of quantum of award, there is no interference with regard to the findings of the Tribunal as to the liability and negligence.

9. In the result, the appeal is partly allowed at the stage of admission itself and the award passed by the Tribunal to the tune of Rs.1,45,000/- is enhanced to Rs.4,50,000/- It is reprsented by the Insurance Company that the award amount as per order of the Tribunal has already been deposited by them before the Tribunal. Therefore the Insurance Company is directed to deposit the enhanced amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dpq

To
The Motor Accidents Claims Tribunal,
Special Sub Judge, Cuddalore.

+2cc to Mr.A.N.Viswanatha Rao, Advocate Sr.44540
+1cc to Mr.D.Bhaskaran, Advocate Sr.44597

C.M.A.No.2579 of 2018

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srg 21/06/2019